Wong Sang Giap & Ors v Wong Keng Giap & Ors

HIGH COURT (KOTA BHARU) — CIVIL SUIT NO 22–87 OF 1992
IDRIS J
17 JANUARY 1999

Partnership *— Partnership property — Whether lands registered in joint names of partners were partnership property — Admissibility of partnership's trading account and letter of administration of deceased partner's estate to prove partnership property — Partnership Act 1961 ss 22, 24 & 26 — Evidence Act 1950 ss 32(1) & 76*

The plaintiffs applied for declarations, inter alia, that the deceased owned a certain share in a partnership Y and that the share in assets and properties registered in the joint names of the deceased and two administrators of the deceased's estate (M and the first defendant), including the lands in dispute ('the lands'), was held on trust for Y. Y was a partnership comprising the deceased, M and W. There was no written agreement as to the terms of the partnership and there was no partnership property shown in the registration form. The plaintiffs contended that under s 22 of the Partnership Act 1961 ('the Act'), the lands were to be regarded as partnership property, in particular having regard to the grant of the letters of administration for the estate of the deceased whereby these lands were declared to be the assets of Y. The plaintiffs also relied on the partnership's trading account (which was not agreed upon by the first defendant), claiming that it was a public document within the meaning of s 74 of the Evidence Act 1950 and therefore relevant and admissible under s 32(1)(b) of that Act to prove that the lands were partnership property. The first defendant submitted that since the lands were registered in the joint names of the deceased, M and himself, they were entitled to undivided shares equally in consonance with s 343(1)(a) of the National Land Code 1965.

Held, dismissing the application:

(1) Whether or not a property is partnership property depends on the intention of the partners. The fact that a property was used by all the partners for partnership purposes need not necessarily qualify it to be termed partnership property even though the partnership may be debited with the outgoings and expenses of the property unless there was evidence to show such an intention (see p 559B–C).

(2) Section 77 of the Evidence Act authorizes the production of copies of a public document in proof of the contents or parts of the contents of the document, on they being so certified in the manner set out in the section. The trading account, no doubt, showed certain facts and figures but without any certificate or signature, etc as required by s 76. In the circumstances, the trading account was not admissible (see pp 559H–I and 560B–C).

(3) From the grant of letters of administration to the two administrators for the administration of the deceased's estate,

there was included, amongst others, an asset '$^1/_3$ share in Yuen Hing Rubber Plantation Co [Y] as per Schedule A'. The inference to be drawn from such inclusion was that the petitioners [plaintiffs] acknowledged that the lands belonged to Y and hence could be treated as 'partnership property' but to the extent of $^1/_3$ share only. This was especially so when there was no partnership agreement ever executed between the three partners and having regard to s 26 of the Act (see p 560H–I).

(4) Even though the lands were vested in the first defendant, in law he held them in trust for the estate of the deceased in whatever proportion due to the latter. A $^1/_3$ share in the lands was treated as the deceased's asset, considering the absence of any evidence to the contrary and the inadmissibility of the trading account. The said $^1/_3$ share had been properly and legally distributed to the rightful beneficiaries (see pp 561I and 562A–B).

[Bahasa Malaysia summary

Plaintif-plaintif telah memohon untuk satu perisytiharan, antara lain, bahawa si mati memiliki bahagian tertentu dalam perkongsian Y dan bahawa bahagian dalam aset dan harta yang didaftarkan dalam nama-nama bersama si mati dan dua pentadbir harta pusaka si mati (M dan defendan pertama), termasuk tanah-tanah yang dipertikaikan ('tanah tersebut'), dipegang atas amanah untuk Y. Y merupakan sebuah perkongsian yang terdiri daripada si mati, M dan W. Tidak terdapat perjanjian bertulis mengenai syarat-syarat perkongsian dan hartanah perkongsian tidak ditunjukkan dalam borang pendaftaran. Plaintif-plaintif berhujah bahawa di bawah s 22 Akta Perkongsian 1961 ('Akta tersebut'), tanah tersebut hendaklah dianggap sebagai hartanah perkongsian, terutamanya memandangkan pemberian surat kuasa mentadbir bagi harta pusaka si mati yang mana tanah itu telah diisytiharkan sebagai aset-aset Y. Plaintif-plaintif juga bergantung kepada akaun perniagaan perkongsian tersebut (yang tidak dipersetujui oleh defendan pertama), dengan menuntut bahawa ia adalah dokumen awam dalam lingkungan maksud s 74 Akta Keterangan 1950 dan dengan itu relevan dan boleh diterima di bawah s 32(1)(b) Akta tersebut untuk membuktikan bahawa tanah tersebut adalah harta perkongsian. Defendan pertama menghujahkan bahawa oleh kerana tanah tersebut didaftarkan dalam nama bersama si mati, M dan dirinya sendiri, mereka berhak mendapat bahagian yang tidak dibahagikan sama rata menurut s 343(1)(a) Kanun Tanah Negara 1965.

Diputuskan, menolak permohonan:

(1) Sama ada suatu harta adalah harta perkongsian bergantung kepada hasrat pekongsi-pekongsi. Hakikat bahawa sesuatu harta digunakan oleh semua pihak untuk tujuan perkongsian tidak semestinya menjadikannya layak digelar sebagai harta

perkongsian walaupun perkongsian tersebut mungkin didebitkan dengan wang keluar dan perbelanjaan melainkan terdapat keterangan untuk menunjukkan hasrat sedemikian (lihat ms 559B–C).

(2) Seksyen 77 Akta Keterangan 1950 membenarkan pengemukaan salinan-salinan dokumen awam sebagai bukti kandungan atau bahagian-bahagian kandungan dokumen tersebut, setelah diperakui dalam cara yang dinyatakan dalam seksyen tersebut. Tidak dapat dinafikan akaun perniagaan tersebut menunjukkan fakta-fakta dan angka-angka tertentu tetapi ia adalah tanpa sebarang sijil atau tandatangan, dan lain-lain seperti yang dikehendaki oleh s 76. Dalam keadaan begitu, akaun perniagaan tersebut tidak boleh diterima (lihat ms 559H–I dan 560B–C).

(3) Daripada pemberian surat kuasa mentadbir kepada dua pentadbir untuk pentadbiran harta pusaka si mati, antara lain, telah termasuk suatu aset '$^1/_3$ share in Yuen Hing Rubber Plantation Co [Y] as per Schedule A'. Inferens yang harus dibuat daripada kemasukan begini adalah bahawa pempetisyen-pempetisyen [plaintif-plaintif] mengakui bahawa tanah tersebut dimiliki oleh Y dan justeru itu boleh dianggap sebagai 'partnership property' tetapi setakat bahagian $^1/_3$ sahaja. Ini adalah demikian memandangkan perjanjian perkongsian tidak pernah dilaksanakan di antara tiga pekongsi dan mengambil kira s 26 Akta tersebut (lihat ms 560H–I).

(4) Walaupun tanah tersebut diletakhak dalam defendan pertama, dari segi undang-undang, ia memegangnya atas amanah bagi harta pusaka si mati dalam apa-apa bahagian yang harus diberikan kepadanya. Suatu bahagian sebanyak $^1/_3$ dalam tanah tersebut dianggap sebagai aset si mati, dengan menimbang ketiadaan sebarang keterangan yang menunjukkan sebaliknya dan ketidakbolehterimaan akaun perniagaan. Bahagian $^1/_3$ tersebut telah diagihkan dengan betul dan secara sah kepada benefisiari-benefisiari yang berhak mendapatnya (lihat ms 561I dan 562A–B).]

Notes

For cases on partnership property, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 877–896.

Cases referred to

Abdul Majeed v Official Administrator, FMS [1939] MLJ 267 (refd)
Ashworth v Munn (1880)15 Ch D 363 (refd)
Devraj Nahar & Ors v Gian Singh & Co [1963] MLJ 173 (refd)
Gian Singh & Co v Devraj Nahar & Ors [1965] 2 MLJ 12 (refd)
Manggai v Government of Sarawak & Anor [1970] 2 MLJ 4 (refd)
Mat Shah bin Mohamed & Anor v Foo Say Meng & Ors [1984] 1 MLJ 237 (refd)

Metal Industry Employees Union v Registrar of Trade Unions & Ors [1976] 1 MLJ 220 (refd)
Mohamed Hanifah v PP [1956] MLJ 83 (refd)
Ponnukon v Jebaratnam [1980] 1 MLJ 282 (refd)
Shangara Singh v PP [1967] 1 MLJ 15 (refd)
Syarikat Jengka Sdn Bhd v Abdul Rashid bin Harun [1981] 1 MLJ 201 (refd)
Tan Ah Chuan & Anor, Re [1954] MLJ 135 (refd)

Legislation referred to

National Land Code 1965 s 343(1)(a)
Partnership Act 1961, ss 22, (1), 24, 26
Evidence Act 1950, ss 32(1), 74, 76

Teo Poh Oon (*Teo & Chew*) for the plaintiffs.
Wan Mahadzir bin Wan Daud (*Yusof Nor & Co*) for the defendants.

Idris J: In the amended statement of claim dated 21 November 1992 the plaintiffs pray for certain declarations:

(a) that the deceased Wong Yeow Wye owns $^{58}/_{70}$ shares in Yuen Hing Rubber Plantation Co and all shares in the assets and properties which are yet to be divided and had been registered in the joint names of the deceased Wong Yeow Wye, deceased Mah Yok Lian and Wong Keng Giap are held on trust for Yuen Hing Rubber Plantation Co;

(b) the administrator Wong Keng Giap is to file a corrective affidavit with the court to include the following immovable properties:

(i) 357526/648717 undivided shares in Lot 1117 (GN 10623)

(ii) 357526/648717 undivided shares in Lot 888 (GN 10626)

(iii) 78179/201907 undivided shares in Lot 5 (GN 1369)

into the estate of the Wong Yeow Wye within 30 days from the date of the order and if he neglects/fails the senior assistant registrar of the High Court is given power to do so;

(c) that the following orders for distribution of the following properties under the Kelantan Land Settlement Ordinance No 51/55:

(i) GN 15877 (actual GN No is 15857) — Lot 1632 GN 15858 — Lot 1633

To	Share Proportions
Mah Yok Lian	119175/384483
Wong Keng Giap	86587/384483
Wong Thye Giap	11918/384483
Wong Sean Giap	11918/384483
Rizal Wong bin Abdullah @ Wong Heng Gian	11918/384483
Wong Sang Giap @ Wong Sang Yiap	11918/384483
Wong Sook Chu	11918/384483

	Wong Soon Cheng	11917/384483
	Wong Soon Pheng	11917/384483
	Wong Soon Yuet	11917/384483
	Wong Sow Geap	11917/384483
(ii)	GN 15854 — Lot 1114	
	To	Share Proportions
	Wong Keng Giap	5552/69492
(iii)	GN 16221 — Lot 888	
	To	Share Proportions
	Wong Keng Giap	38183/71701
(iv)	GN 16220 — Lot 5	
	To	Share Proportions
	Wong Yeow Wye	26060/201907
	Mah Yok Lian	26060/201907
	Wong Keng Giap	26059/201907
(v)	GN 16224 — Lot 944	
	GN 16225 — Lot 1636	
	To	Share Proportions
	Mah Yok Lian	59305/302584
	Wong Keng Giap	65239/302584
	Wong Thye Giap	5931/ 302584
	Wong Sean Giap	5931/302584
	Wong Heng Giap @ Rizal Wong bin Abdullah	5931/302584
	Wong Seng Giap @ Wong Sang Yiap	5931/302584
	Wong Sook Chu	5931/302584
	Wong Soon Cheng	5931/302584
	Wong Soon Pheng	5931/302584
	Wong Soon Yuet	5931/302584
	Wong Sow Geap	5931/302584

('the land settlement orders') are rendered null and void and the said properties are to be returned and registered again in the names of the late Wong Yeow Wye, the late Mah Yok Lian and Wong Keng Giap jointly and any other orders that the court deems fit.

At the outset of the hearing, both parties *indicated that they were not adducing any viva voce* evidence but were purely relying on agreed documentary evidence and statement of agreed facts.

It will be observed that all the documents in the bundles of documents filed by both parties are agreed upon with the exception of one crucial document — item 02 in the plaintiffs' bundle — viz 'Penyata Cukai' (Tax

Statement) for the year ended 31 December 1962 of Yuen Hing Rubber Plantation Co, Pasir Puteh, Kelantan signed by the deceased Wong Yeow Wye as principal partner and submitted for tax purposes — see pp10–13 of the plaintiffs' bundle (collectively called the 'trading account'). In a letter to the first defendant dated 2 July 1998, the plaintiffs' solicitors argued that item 02 should have been agreed to as it constituted a public document. I shall discuss this issue later in the judgment.

From the agreed facts and the agreed documents, the lands in dispute were originally registered under three titles, namely 357526/648717 undivided shares in CT 196, 177923/302584 undivided shares in CT 45 and 78179/201907 undivided shares in GN No 1369. The undivided shares in these three titles were registered in the joint names of deceased Wong Yeow Wye, his wife deceased Mah Yok Lian and Wong Keng Giap (the first defendant) without any specific share proportion being assigned to each of them.

CT 196 comprised three lots:

(i) Lot 886 — this lot number was changed to Lot 1114 (GN 10620) (now GN 15854)

(ii) Lot 888 (GN 10626) then changed to GN 16221

(iii) Lot 890 — this lot was divided into two new lots:

  (a) Lot 1117 (GN 10623) later was subdivided into two new lots, namely Lot 1632 (GN 15857) and Lot 1633 (GN 15858); and

  (b) Lot 1118 (GN 10624) later changed to GM 769.

CT 45 comprised two lots:

(a) Lot 942 (GN 14638) later changed to Lot 1636 (GN 16225)

(b) Lot 944 (GN 14639) later changed to GN 16224.

GN 1369 comprised three lots:

(a) Lot 5 (GN 1369) later changed to GN 16220

(b) Lot 847 (GN 14063)

(c) Lot 848 (GN 14064).

It will be further observed that there is a grant of letters of administration dated 24 September 1978 issued to Mah Yok Lian and Wong Keng Giap (the first defendant) as administrators for the due administration of the estate of Wong Yeow Wye (the deceased), though for some obscure reasons, certain landed properties, namely 357526/648717 undivided shares in Lot 1117 (GN 10623) and Lot 1118 (GN 10624), 3575/648717 undivided shares in Lot 888 (GN 106267) and 78179/201907 undivided shares in Lot 5 (GN 1369) all in Mukim Padang Pa' Amat, Pasir Puteh are not included therein.

Sometime in March 1981, the inquiry officer under the Kelantan Land Settlement Ordinance 1955 held a series of enquiry under the said Ordinance relating to these lands and, after due enquiries, made certain orders concerning Wong Yeow Wye's $^1/_3$ share in the joint ownership of these lands.

Be that as it may, the plaintiffs contend that all the landed properties though registered in three joint names, in reality the purchase price was largely contributed by Wong Yeow Wye to the tune of $58,000 with Mah Yok Lian contributing $8,000 while the first defendant only put in $4,000.

This is evident as reflected in the trading account — hence, as further submitted by the plaintiff, Wong Yeow Wye's share in the properties should be $^{58}/_{70}$ while Mah Yok Lian $^{8}/_{70}$ and the first defendant $^{4}/_{70}$.

Plaintiffs further submit that under s 22 of the Partnership Act 1961 ('the Act'), these lands are to be regarded as partnership property and in particular, having regard to the grant of the letters of administration for the estate of Wong Yeow Wye whereby these lands are declared to be the assets of Yuen Hing Rubber Plantation Co with Mah Yok Lian and the first defendant as administrators. This, the plaintiffs say, is a clear indication that the lands belong to the partnership, in which event though they are registered in the three names jointly, they are to be treated, pursuant to s 24 of the Act, as between the partners (including the representatives of the deceased partner) and also as between the heirs of the deceased partner and his executors or administrators, as personal and not real estate and shall, therefore, devolve as such. The case of *Ashworth v Munn* (1880)15 Ch D 363 is quoted in support thereof. Plaintiffs further maintain that by virtue of the proviso to s 22(1) of the Act, upon the death of Wong Yeow Wye and Mah Yok Lian, the legal estate devolves upon the surviving partner, ie the first defendant but subject to the equitable rights of the deceased's legal representatives.

It is common ground that 'Yuen Hing Rubber Plantation Co' was registered under the Registration of Business Ordinance 1956 on 23 July 1959 as a partnership concern and it comprises three persons, namely Wong Yeow Wye, Mah Yok Lian and Wong Keng Giap. There is no written agreement as to the terms of the partnership and apparently there is no partnership property shown in the registration form — Form A — see p 17 of the first defendant's bundle of documents. The three names were jointly registered in the respective land titles on 11 August 1962.

The first defendant contends that since these lands as shown in the respective titles are registered in the joint names of Wong Yeow Wye, Mah Yok Lian and the first defendant, they are entitled to undivided shares equally in consonance with s 343(1)(a) of the National Land Code 1965.

Section 22 of the Act reads:

> (1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business, are called in this Act partnership property and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement;
>
> Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law applicable thereto but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(2) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land, and purchase other land out of the profits to be used in like manner, the land so purchased belongs to them, in the absence of any agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land first mentioned at the date of the purchase.

Section 24 of the Act reads:

> Where land or any interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate.

Section 22(1) deals with the partnership property — what constitutes partnership property, its application and devolution while s 24 speaks of conversion into personal estate of land held as partnership property. It will be seen that the underlying principle in s 24 is that prima facie the property of the partnership, unless there exists an agreement to the contrary, has to be sold on dissolution of partnership, though in equity it is deemed to have already been converted. Since it is only a conversion in equity, the legal estate or interest devolves according to the nature and tenure of the land and also the general rules applicable thereto but in trust so far as necessary for the persons beneficially interested thereof. In the case of *Mat Shah bin Mohamed & Anor v Foo Say Meng & Ors* [1984] 1 MLJ 237, Wan Sulaiman FJ said (at p 239):

> On dissolution of a partnership all the properties of the firm, real and personal, will have to be sold. Hence, in equity, it is deemed to have been already converted into personal estate and therefore devolves as such. If several partners are joint owners of a parcel of land, then on the death of one, the legal estate will devolve on the survivors subject to the equitable rights of the representatives of the deceased: *Wray v Wray* [1905] 2 Ch 349. On the other hand, if the land is vested in one partner alone, the legal estate will vest on his death on his personal representatives in trust for the other partners and the persons entitled to the deceased's estate according to the partnership agreement.

It will be noted that both ss 22(1) and 24 specifically deal with *partnership property* and therefore what is of paramount importance to attract the application of these two sections is whether the lands can be construed and classified as 'partnership property'.

As indicated earlier when the partnership was registered there was no mention of the partnership property; it can therefore be safely assumed that there was nothing that was originally brought into the partnership stock and it will also appear that it was only during the continuance of the partnership, it had acquired, if at all it can be said that the partnership had acquired certain property, when the lands were registered in the joint names of the three persons. But even then it must be on account of the partnership if by purchase though I am not unmindful of s 23 of the Act or that the

A acquisition was for the purposes or in the course of partnership business. There must at least be evidence to this effect.

Generally speaking, whether or not a property is partnership property or a property deemed to be partnership property depends on the intention of the partners which had to be determined on each individual case. The B fact that a property used by all the partners for the partnership purposes need not necessarily qualify to be termed partnership property, even though the partnership may be debited with the outgoings and expenses of the property, unless there is evidence to show such an intention — see the decision of Privy Council in *Gian Singh & Co v Devraj Nahar & Ors* [1965] 2 MLJ 12 affirming the decision of the Court of Appeal in *Devraj Nahar & C Ors v Gian Singh & Co* [1963] MLJ 173 and see also *Ponnukon v Jebaratnam* [1980] 1 MLJ 282 (FC) where Salleh Abas FJ (as he then was) said at p 283:

> The law regarding partnership property may be stated as follows. The question whether a property is that of a partnership or a separate property of D the respondent only depends upon whether there is an agreement (*Lindley on Partnership* (1971) (13th Ed) p 349) amongst the partners, express or implied, touching such property. In the absence of any such agreement, the question has to be resolved upon whether there is an intention of the partners to treat the property as a partnership property. If no such intention can be inferred, the property is the separate property of a partner although it may be used for, or even essential to, the partnership business and the partnership may even be E debited with the outgoings and expenses of the property.

The only evidence which is strongly relied upon by the plaintiffs is the trading account which has not been agreed upon by the first defendant and hence would require sufficient proof. The plaintiffs claim that being a public document within the meaning of s 74 of the Evidence Act 1950, it will F therefore be relevant and admissible under s 32(1)(b) of the said Act. The first defendant however disputes over the claim to categorise it as a public document.

Proceeding, however, on the premise that the trading account is a public document, does not mean that it is readily relevant and admissible. G Be it noted that the said s 74 is not concerned with relevancy or admissibility — that question has to be decided with reference to other provisions of the Act. Being categorized as public document will, no doubt, facilitate its admissibility as evidence after satisfying and complying with certain prerequisites and the party concerned is not absolved from the need of furnishing the required evidence. A public document is merely an H alternative to the production of original document.

Section 77 of the Evidence Act authorizes the production of copies of public document in proof of the contents or parts of the contents of the document, on they being so certified in the manner set out in s 76 of the Act. Section 76 of the Act says:

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> Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate, written at the

> foot of the copy, that it is a true copy of the document or part thereof, as the case may be, and the certificate shall be dated and subscribed by the officer with his name and his official title, and shall be sealed whenever the officer is authorized by law to make use of a seal, and the copies so certified shall be called certified copies.
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> Explanation — Any officer who by the ordinary course of official duty is authorized to deliver the copies shall be deemed to have the custody of the documents within the meaning of this section.

The trading account, no doubt, shows certain facts and figures but without any certificate or signature, etc as required by s 76. See *Re Tan Ah Chuan & Anor* [1954] MLJ 135 at p 140, *Mohamed Hanifah v PP* [1956] 83 and *Shangara Singh v PP* [1967] 1 MLJ 15. I, therefore, hold that in the circumstances, the trading account is not admissible.

As to its relevancy, s 32(1) of the Evidence Act says:

> Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases:
>
> (a) ...
>
> (b) when the statement was made by any such person in the ordinary course of business, and in particular when it consists of any entry or Memorandum made by him in books kept in the ordinary course of business ... or signed by him; ... .

Whilst it is true the statements in the trading account were made by deceased person, there are other factors that required to be proved before the said account can be considered relevant. Of particular concern is the non-availability of evidence to show the statements were made in the ordinary course of business or parts of an entry in a memorandum or book kept in the ordinary course of business as to satisfy the requirements of s 32(1)(b). See the Federal Court decision in *Syarikat Jengka Sdn Bhd v Abdul Rashid bin Harun* [1981] 1 MLJ 201 at p 203. From the aspect of trading account alone, since it is held inadmissible, there is insufficient evidence to support or suggest that the lands are 'partnership property'.

However, from the grant of letters of administration to the two administrators for the administration of the estate of Wong Yeow Wye there is included, amongst others, as asset '$^1/_3$ share in Yuen Hing Rubber Plantation Co as per Schedule A'. The inference to be drawn from such inclusion, to my mind, is that the petitioners acknowledged the lands belonged to Yuen Hing Rubber Plantation Co and hence could be treated as 'partnership property' but to the extent of $^1/_3$ share only. This was especially so when there was no partnership agreement ever executed between the three partners and having regard to s 26 of the Act which says:

> The interests of partners in the partnership property, and their rights and duties in relation to the partnership, shall be determined, subject to any agreement, express or implied, between the partners, by the following rules:

A (a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;

(b) ... .

Indeed the petition for the grant of the said letters of administration was B never objected to by all the beneficiaries and neither was there any objection when all of them appeared before the enquiry officer for the issue of various land settlement orders for distribution of Wong Yeow Wye $^1/_3$ share in these lands. They could, if they were so mindful of exerting their rights, have raised objection at least in regard to the share proportions of the properties to be distributed, and if there need be, proceeded to appeal to the district C officer under s 16(1) of the Ordinance and subsequently to the High Court. And in cases where possessory titles were issued, they could have taken steps under s 10 of the Ordinance within the specified period. But they did not and instead filed a suit in the High Court seeking certain declarations. It is partly on this score that the first defendant resists the declarations D arguing that by the plaintiffs' acts and conducts they should be refrained from pursuing this line of action.

The law is clear that the power of the court to make a binding declaration is discretionary and the court will not make a declaratory judgment where the question raised is purely academic or the declaration will be useless or embarrassing or where an adequate alternative remedy is E available. See *Manggai v Government of Sarawak & Anor* [1970] 2 MLJ 41 (FC) and at p 44 Gill FJ (as he then was) said:

> It is well settled law that the court will not make a declaratory judgment where an adequate alternative remedy is available (see 22 *Halsbury's Laws of England*, (3rd Ed) p 749, para 1611).

F and in *Metal Industry Employees Union v Registrar of Trade Unions & Ors* [1976] 1 MLJ 220, the Federal Court again held that:

> the learned judge was right in declining to exercise his discretion to make the declarations as the statutory remedy of appeal better suited the case and would more satisfactorily dispose of the dispute.

G One other issue that is being canvassed by the plaintiffs is that there is created a trust over these lands. In this respect, my attention is drawn to the case of *Abdul Majeed v Official Administrator, FMS* [1939] MLJ 267 where it was held that when one of the partners or even a third person had to be registered as the owner of the lands acquired by the partnership, there could H be no doubt that partner or a third person would be an express trustee of the partnership. In fact this principle had already been elucidated by Wan Sulaiman FCJ in *Mat Shah* case. In *Abdul Majeed*'s case, the learned judge held that the lands though acquired by the partnership, could not be registered in the partnership name under the law and the lands were therefore registered in the name of one of the partners. In the present suit, I there is no evidence of similar effect but as pointed out earlier, the plaintiffs anchor their claims on the proviso to s 22 of the Act. Thus even though the lands are vested in the first defendant, in law he holds them in trust for the

estate of Wong Yuen Wye in whatever proportion due to the latter. In effect that is what actually happened — a $^1/_3$ share in the lands is treated as Wong Yuen Wye's asset, considering the absence of any evidence to the contrary and the inadmissibility of the trading account. The said $^1/_3$ share had been properly and legally distributed to the rightful beneficiaries.

For reasons stated above, I refuse to grant the declarations sought for and accordingly dismiss the suit with costs.

Suit dismissed with costs.

Reported by Ng Sheau Jiuan